

### REMARKS

Applicant appreciates the time taken by the Examiner to review Applicant's present application. This application has been carefully reviewed in light of the Official Action mailed August 24, 2006 ("Office Action"). This Reply encompasses a bona fide attempt to overcome the rejections raised by the Examiner Krisciunas and presents amendments as well as reasons why Applicant believes that the claimed invention, as amended, is novel and unobvious over the applied prior art. Accordingly, Applicant respectfully requests reconsideration and favorable action in this case.

#### Rejections under 35 U.S.C. § 112

Claims 1-12 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Specifically, Examiner Krisciunas considered the limitation "code for mapping revenue management problem data" of claim 1 was not described in the specification "in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention." Office Action, page 9, *para.* 5. Applicant respectfully disagrees. There is a strong presumption that an adequate written description of the claimed invention is present when the application is filed. *In re Wertheim*, 541 F.2d 257, 263, 191 USPQ 90, 97 (CCPA 1976) ("we are of the opinion that the PTO has the initial burden of presenting evidence or reasons why persons skilled in the art would not recognize in the disclosure a description of the invention defined by the claims"). Applicant respectfully submits that Examiner Krisciunas has not met this initial burden. Applicant further respectfully submits that, upon reading and understanding the disclosure of the invention, one skilled in the relevant art would have had no problem recognizing that the inventors, at the time the application was filed, had possession of the claimed invention.

As an example, the examiner's attention is respectfully directed to FIGURE 1 and pages 5-6 of the Specification. In embodiments of the invention, a system 90 for solving revenue management problems includes optimization engine 100, which employs "software programming stored on a tangible storage medium to apply various

algorithms to network data in order to determine the optimal supply and price values for products, such as airline tickets or advertising space, in a network.” See Specification, page 5, *para.* 21. Components of optimization engine 100, including data manager 120, are “stored on a tangible storage medium and can include software instructions which can be executed to perform the functionality described herein.” See Specification, page 6, *para.* 21. To perform its functionality, data manager 120 includes mapping software program 121 for mapping the revenue management program data to database 123 or to memory 127 in accordance with a generic (i.e., industry-independent and algorithm-independent) revenue management data model which is particularly described and specifically claimed in claim 1. See Specification, page 6, *para.* 22.

In the Office Action on pages 10-11, *para.* 9, Examiner Krisciunas stated “the computer program would inherently contain code.” Consistent with this statement by Examiner Krisciunas, mapping software program 121 would inherently contain code for mapping revenue management problem data and one skilled in the relevant art would therefore have had no problem recognizing that the inventors, at the time the application was filed, had possession of the claimed invention. Accordingly, withdrawal of this rejection is respectfully requested.

#### Rejections under 35 U.S.C. § 103

Claims 1-2, 4-5, 10-12, 22 and 25-29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0055865 (“Hammann”). Claims 3, 6-9, 23-24 and 30-31 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hammann in view of U.S. Patent No. 6,263,315 (“Talluri”). Claims 32-34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hammann in view of Talluri and further in view of U.S. Patent No. 6,721,714 (“Baiaida”). The rejections are respectfully traversed. Arguments submitted in the previous replies dated April 25, 2006 and July 28, 2006 (“Previous Replies”) are still pertinent and thus are expressly incorporated herein by reference. Additionally, Applicant respectfully submits the following for the examiner’s consideration.

### **Generic Use of a RM System in a Specific Industry v. Industry-Independence of a Generalized RM Data Model**

As respectfully submitted in the Previous Replies, like other prior revenue management systems, Hammann's invention provides a specific and not a *generic* solution to revenue management ("RM") problems. Examiner Krisciunas rebutted by stating that "[t]he concept of 'generic' data model can be met by a data model that can be used by more than one person or one that can be used with more than one set of data. See Office Action, page 2, *para.* 3. Applicant respectfully disagrees. Within the disclosure, the term "generic" is used to functionally describe a revenue management data model that is applicable to a wide variety of networks, industries, algorithms, and markets. See, e.g., Specification, page 3, *paras.* 7-9, page 5, *para.* 19, page 10, *para.* 36, page 13, *para.* 44, and page 23, *para.* 62. Applicant also respectfully disagrees with Examiner Krisciunas's statement that "[t]he fact that the system [of Hammann] can be used for various revenue management calculations and different data sets constitutes that it is generic." Hammann does not seem to support this statement. Hammann's system is specifically designed to be used *in* the human-factor resource industry, regardless of whether Hammann's system may be used *by* more than one person or with more than one set of data. Such a "generic" use of Hammann's system will not change the specific nature of Hammann's system and will not whatsoever make the system of Hammann a "generic" one.

Contrary to Examiner Krisciunas's allegations that the system of Hammann can be used for various revenue management calculations and different data sets, Hammann expressly describes which industries fall outside of its scope of human-factor resource industries, the portion of which is reproduced below for the Examiner's convenience:.

[0028] The following example transactions fall outside the human-factor resource industries:

[0029] Perishable resource industry services such as those rendered by airlines, hotels, rental car companies, golf courses, bowling alleys and arena or stadium sporting/entertainment event-providers;

[0030] Mass-produced durable and consumer goods transactions such as automotive, computer, electronic, clothing and grocery transactions.

Applicant notes that Hammann particularly excludes perishable resource industry services rendered by the airline industry.

As respectfully submitted in the Previous Replies, the generic revenue management data model as set forth in Claims 1-12 and 22-34 allows multifarious revenue management problem data to be expressed in a uniform format. Examiner Krisciunas argued that Hammann teaches determining marginal values for individual resources and parameter values for composite resources and that “[b]oth of these determinations provide a value, whether it be a marginal value or a transaction parameter value, which constitutes *a uniform format of a number value.*” *Emphasis added.* See Office Action, page 3, *para.* 3. Applicant respectfully disagrees. The claim language specifically recited “a uniform format of the generic revenue management data model.” Applicant respectfully submits that the generic revenue management data model as claimed in Claims 1-12 and 22-34 is not a number value. Thus, “a uniform format of a number value” does not whatsoever read on “a uniform of the generic revenue management data model.”

Contrary to Examiner Krisciunas’s statement on page 3 of the Office Action, the term “generic” functionally describes the revenue management data model as set forth in Claims 1-12 and 22-34. Specifically, the term “generic” functionally describes the data structures of the revenue management data model. While revenue management problems and data associated therewith may be specific from implementation to implementation, the data structures of the RM data model remain generic to the problems to be solved. As Examiner Krisciunas stated, “[t]he recited method steps would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data.” *id.* Contrary to Examiner Krisciunas’s statement that “this descriptive material will not distinguish the claimed

invention from the prior art in terms of patentability,” functional descriptive material is a limitation in the claim and must be considered and addressed in assessing patentability under 35 U.S.C. § 103. See MPEP 2106(VI). Thus, a rejection of the claim as a whole under 35 U.S.C. 103 is inappropriate unless the functional descriptive material would have been suggested by the prior art. *In re Dembiczak*, 175 F.3d 994, 1000, 50 USPQ2d 1614, 1618 (Fed. Cir. 1999). Applicant respectfully submits that the cited art, including Hammann, does not teach or suggest this functional descriptive material.

### **A Mere Collection of Data v. A Data Structure**

As respectfully submitted in the Previous Replies, Hammann’s three lists (i.e., resource list 32, composite resource list 33 and demand records list 34) are not identical to the data structures as claimed in the pending Claims 1-12 and 22-34. See, e.g., Specification, *paras.* 33 and 52-55. The blocks of data in each of Hammann’s lists are structured differently, have different purposes, and serve different functions. Contrary to Examiner Krisciunas’s statement on page 4 of the Office Action, the fact that the claimed data structures have different purposes from the blocks of data in Hammann’s lists is not at all irrelevant. Applicant respectfully disagrees with Examiner Krisciunas’s statement that this fact “does not impact the functionality of the claim.” As one skilled in the art can appreciate, different data structures allow different operations to be performed on the data contained therein. Accordingly, different data structures constructed for different purposes have different functionalities.

Applicant further respectfully disagrees with Examiner Krisciunas’s statement that a data structure “merely represent[s] a collection of data,” See, e.g., Office Action, page 5. Applicant respectfully submits that Examiner Krisciunas’s interpretation of the term *data structure* does not agree with the industry accepted definition and Examiner Krisciunas has not cited any documents which support her interpretation of the term *data structure*. In computer programming, the term *data structure* refers to a scheme for organizing related pieces of information. The distinction between a *data structure* and a *mere collection of data* is fundamental. A mere collection of data does not require organization. Without organization, there is no structure. Without structure, Hammann does not have an invention. The term “collection” is used in Hammann to

describe *organized* records of data structures 32, 33, 34. See Hammann, Figure 6, col. 5, *paras.* 68-76 and 135-142. Applicant respectfully submits that the scheme (i.e., the generic RM data model) for organizing RM problem data as taught in the Specification and claimed in Claims 1-12 and 22-23 of the present application is completely different from and non-obvious over Hammann's system and method of organizing land-labor-capital resources via data structures 32, 33, 34.

### **A Number in a Data Field of a Record v. A Fourth Data Structure**

For a rejection under 35 U.S.C. § 103(a) to stand, all the claim limitations must be found in the applied art, either expressly or implicitly. As submitted in the Previous Replies, Hammann does not expressly teach the limitation of "a fourth data structure for storing a representation of associations between the one or more resource bundles and the one or more network demands." Examiner Krisciunas cited the optimization function mentioned in paragraph 31 of Hammann as implying an algorithm which "inherently contains an association between resources and demands and the algorithm as well as the results of the optimization function reside in data structures since a data structure is a mere collection of data." See Office Action, page 5. Applicant respectfully disagrees. The cited paragraph 31 of Hammann mentions determining marginal values for individual resources with "a continuous optimization function using the internal data structures." One of the three data structures of Hammann explicitly contains a data field for storing a number linking composite resources and demands. Specifically, in Hammann, the association of demand to resource is a number in a data field of the demand records. Contrastingly, as respectfully submitted in the Previous Replies, in embodiments of the invention as claimed in Claims 1-12 and 22-34, the association between the resource bundles and the network demands is kept separately in the fourth data structure. Having this association in a separate data structure provides more flexibility and is technologically more advanced since it follows the paradigm of relational databases. See Reply dated July 28, 2006, page 13. The composite resource number 43 of Hammann neither expressly nor implicitly teaches the claimed fourth data structure.

### Storing v. Mapping

Applicant respectfully disagrees with Examiner Krisciunas's statement that "[t]he fact that Hammann has memory for storing data implies a data base, as cited in paragraph 32, which means that the system would inherently have a method of mapping, or assigning a path, to the information so that it is stored in this memory." Applicant respectfully submits that there is no support for this statement. The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art); *In re Oelrich*, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.' " *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted) (The claims were drawn to a disposable diaper having three fastening elements. The reference disclosed two fastening elements that could perform the same function as the three fastening elements in the claims. The court construed the claims to require three separate elements and held that the reference did not disclose a separate third fastening element, either expressly or inherently.). "In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original).

Applicant respectfully submits that Examiner Krisciunas has not provided any basis in fact and/or technical reasoning that reasonably support the determination that "mapping", the allegedly inherent characteristic of Hammann, necessarily flows from the fact that Hammann has a memory for storing data. One skilled in the art would have recognized that mapping is not an inherent function of storing. Storing involves writing

data to a memory location(s). Mapping involves transforming data from one format at the first location (source) into a different format at a second location (destination). Contrary to Examiner Krisciunas's statement, mapping is not simply "assigning a path" to the information. Mapping according to embodiments of the invention involves expressing (i.e., transforming) multifarious revenue management problem data in the uniform format of the generic revenue management data model. See, e.g., Specification, page 6, *para.* 22. Therefore, Hammann neither explicitly nor implicitly describes mapping.

### **Demand Curves v. A Fifth Data Structure**

As respectfully submitted in the Previous Replies, Hammann does not teach "a fifth data structure representing a resource demand." Examiner Krisciunas rebutted with "[s]ee Figures 10a and 10b which shows resource demand curves generated by the resource demand determination function, which constitutes an optimization process." See Office Action, page 6. According to paragraphs 159-161 of Hammann, the graphs of Figures 10a and 10b illustrate two situations where the difference between supply minus demand (line 81 of Figure 10a) is greater than 0 and where the difference between supply minus demand (line 85 of Figure 10b) is less or equal to 0. Applicant respectfully submits that, even if the resource demand determination function of Hammann constitutes an optimization process, Examiner Krisciunas has not provided any basis in fact and/or technical reasoning to reasonably support the determination that a fifth data structure representing a resource demand would necessarily flow from the optimization process of Hammann.

### **No Motivation to Modify Hammann**

As respectfully submitted in the Previous Replies, Hammann does not teach all the claim limitations as recited in Claims 1-2, 4-5, 10-12, 22 and 25-29. Thus, a *prima facie* case of obviousness has not been established. Applicant further respectfully submits that Hammann teaches a specific system and method for solving a specific problem in the human-factor resource industry. A person having ordinary skill in the art would *not* reasonably have expected to solve a different problem and come up with a



revenue management data model that is non-specific to industries to which it is used. Therefore, one of ordinary skill in the art, at the time the invention was made, would not have been motivated to modify Hammann so as to arrive at the invention as claimed in Claims 1-2, 4-5, 10-12, 22 and 25-29.

### **No Motivation to Combine Hammann and Talluri**

Examiner Krisciunas asserted that “the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggest in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.” *Citation omitted*. Examiner Krisciunas further stated that “[i]n the instant case, Talluri is in the same field of endeavor as Hammann: revenue management.” Applicant respectfully disagrees and submits that a proper motivation to combine Hammann and Talluri has not been established. Examiner Krisciunas’s statement actually supports the lack of motivation to combine Talluri and Hammann and hence the non-obviousness of the invention as claimed in Claims 1-12 and 22-34. As particularly discussed in the “BACKGROUND OF THE INVENTION” on page 2 of the Specification, at the time the invention was made, one skilled in the revenue management art understood that revenue management data models are algorithm or industry specific. That is, each different optimization scheme requires a unique revenue management data model, and new optimization schemes cannot be easily integrated with existing revenue management data models. Thus, if Talluri and Hammann were in the same field of revenue management, each would have employed a different optimization scheme requiring a unique revenue management data model. For Talluri, it’s managing reservations for a limited capacity (e.g., seats) on an airline flight. For Hammann, it’s determining marginal values between supply and demand for individual human-factor resources. The combined teachings of the references would have suggested to those of ordinary skill in the art two entirely different revenue management data models. It would have been understood by those of ordinary skill in the art that these two different revenue management data models cannot be easily integrated. The argument that Hammann

and Talluri cannot be readily and easily combined is supported by the following quotes and examples from Hammann and Talluri:

1. Essential functionality of Hammann is absent from Talluri. For example, "Satisfaction of profile criteria and resource availability? (30)" (see Hammann, Figure 5) is absent from Talluri. In Talluri, there are no checks (i.e., questions on profile and availability) once the revenue is determined to be greater than the sum of the displacement costs. See Talluri, Figure 3.
2. Similarly, "Send reservation counter-offer to a user interface through the resource reservations system (31)" (see Hammann, Figure 5) is absent from Talluri. In Talluri, the request is simply rejected or accepted and there is no follow-up in the form of counter offers. See Talluri, Figure 3.
3. According to Figure 18 of Hammann, the protection level is determined by the accumulated mean plus standard deviation. Talluri describes a completely different method to derive the authorization level in col. 2, lines 1-20.
4. Hammann describes specific data structures which are geared more toward project management than selling tickets or services at full vs. discounted prices. See Hammann, *para.* 0137, comparing resource lists and composite resource lists to Microsoft Project™. However, data structures are incidental to Talluri which concerns how to use certain type of controls (threshold value tables). Even if such a table is "housed" in a data structure design especially for it, combining it with Hammann would not make the specific data structures of Hamman generic.

Additionally, Applicant respectfully submits that Hammann and Talluri are not in the same field of endeavor. As submitted above, Hammann is in the human-factor resource industry and expressly excludes certain non-human-factor resource transactions, including those rendered by the airline industry. See Hammann, *paras.* 28-30. On the other hand, Talluri is directed to the airline industry and describes examples outside of human-factor resource industries. See Talluri, Abstract. Applicant further respectfully submits the following for the Examiner's consideration. In Talluri, the multidimensional lookup tables of threshold values provide one table for each resource. See Talluri Figure 2A and 2B. Each table has two main dimensions:

available capacity and time. The resources (e.g., seats) are perishable resources as they only last until the associated plane takes off. Thus, the threshold values (for a given resource) depend on the capacity left and time until departure. The marginal values in Hammann correspond to those threshold values. However, Hammann's marginal values do not depend on how much time is left until a resource perishes. In contrast to Talluri, time seems to be only used in Hammann in defining a resource. See Hammann, EXAMPLES 1-11.

Moreover, Hammann's marginal values do not depend on how much capacity is left or how much time is left; instead, it has resources that have a capacity of one for each time slot (i.e. different time slots of the same hairdresser are different resources). Hammann is explicitly focusing on human-factor industries and excludes other industries where capacity left and time left play a role. See Hammann, *para.* 13. Thus, if one skilled in the art were to modify Hammann's system with Talluri's lookup tables of threshold values, the resulting combination might provide tables of a single threshold value for each resource where capacity and time do not play a role; however, the combination of Hammann and Talluri would not have produced a generic resource management data model. Accordingly, one skilled in the art would not have been motivated to combine Hammann and Talluri.

In view of the above, Applicant respectfully submits that Examiner Krisciunas failed to establish a proper motivation to combine Hammann and Talluri.

### **No Motivation to Combine Hammann, Talluri, and Baiada**

For similar reasons, Applicant respectfully submits that Examiner Krisciunas failed to establish a proper motivation to combine Hammann, Talluri, and Baiada.

As to Claim 32, Applicant respectfully submits that the cited Figure 8 of Baiada illustrates how slowing-down or speeding-up an aircraft may affect things associated with that particular aircraft. See Baiada, col. 13, lines 48-49. Baiada explicitly states that "the method of the present invention results in assigning a specific cornerpost arrival time to each aircraft." See Baiada, col. 13, lines 55-569. That is, the method of Baiada does not result in any "optimal network-wide solution," for selling seats on a plane which is derived "based on the optimization sequence data," as recited in Claim

31. Accordingly, Baiada does not teach or suggest “decomposing the network to determine how the optimal network-wide solution affects individual local resources,” as recited in Claim 32.

The fundamental differences between Hammann and Baiada are another reason why one of ordinary skill in the art, at the time the invention was made, would not have been motivated to combine Hammann and Baiada. Contrary to Examiner Krisciunas’s allegation, Hammann and Baiada are not analogous art within the meaning of revenue management. As discussed before, Hammann is directed to human-factor resource management. By contrast, Baiada is directed to tactical management of aircrafts, not human-factor resources. Applicant respectfully submits that there is no support, and Examiner Krisciunas has not cited any, for the allegation that “it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the management system of Hammann with the impact on resources feature of Baiada to provide a more comprehensive and efficient system since it alerts the user to the impact decisions will have on resources as well as revenue and allows the user visibility to pick the best decision considering all the criteria.” Specifically, given the teachings of Hammann and Baiada, and the general knowledge available to one of ordinary skill in the art at the time the invention was made, one of ordinary skill in the art would not have known how Baiada’s business method of tactically moving aircrafts would have any deterministic effect on Hammann’s human-factor resource management system. Support for the lack of desirability to modify/combine Baiada with Hammann can be found in Hammann, discussed above, and in Baiada. For example,.

- Col. 13, lines 1-7: “The process of this embodiment of the present invention strives to find a trajectory set that slows down those aircraft that may not have gates or fewer passenger connections, etc. or speeds up aircraft to arrive early that have gates available. Once a set of gate arrival times is found that better meets the airline’s operational and business goals, these new, optimized gate arrival time over-ride the prior, tentative gate times.”;
- Col. 3, lines 3-12: “(i.e., speed up one aircraft and slow down another to mitigate congestion at an arrival airport; assign an aircraft to gate **35** versus gate **15**)”;

- Col. 8, lines 4-15: "A four-dimensional (4D, i.e., three spatial directions and time) asset tracking process that looks at the current status of all [the airline's] assets--controlled and uncontrolled.";
- Col. 10, lines 1-10: "For example, the need to arrive on time must be balanced against the required gate time to assure all of the gate functions can be accomplished to assure the next on-time departure, while evaluating the need to use minimum fuel to reduce costs.";
- Col. 11, lines 8-23: "the best available solution may be to slow the flight down to save fuel.";
- Col 2, lines 1-20: "the core process within the airline industry is the movement of the aircraft.";
- Col 2, lines 47-51: "processing this considered data to predict the trajectories of the user airline assets, along with a smaller set of their competitor's assets (e.g., aircraft), ...";
- Col. 2, line 66 – col. 3, line 5: "In a general sense, this embodiment of the present invention is a business method for tactically managing an airline's operational assets for transporting passengers, bags, and cargo."

Hence, the combination of Hammann, Talluri, and Baiada fails to teach or suggest Claim 32.

As to Claim 33, Examiner Krisciunas alleged that Figure 8 of Baiada "depicts a flow chart of how the various resources are integrated in the system." Applicant respectfully disagrees. Baiada is directed to a business method for tactically managing an airline's operational assets for transporting passengers, bags and cargo. See Baiada, col. 2, line 67 – col. 3, line 2. The cited parameters and factors of Baiada in col. 4, lines 28-41 are considerations for the tactical management of these operational assets. These considerations are not "individual local resources," as recited in Claim 33. Further, Baiada does not teach or suggest about managing demands placed on these considerations and, particularly, "a fifth data structure for storing a representation of demands placed on the individual local resources," as recited in Claim 33. Hence, the combination of Hammann, Talluri, and Baiada fails to teach or suggest Claim 33.

As to Claim 34, Examiner Krisciunas alleged that paragraph 146 of Hammann, reproduced below, is "equivalent to providing an optimal price and quantity as it performs an identical function in substantially the same manner with substantially the same results." Paragraph 146 of Hammann discloses:

"The basic control structured used to iteratively determine marginal values is identical regardless of the optimization function employed. This generic control structure is shown in FIGS. 7 and 8. A supply-demand balance optimization function is depicted in FIGS. 6 through 11B. An EMRR optimization function is depicted in FIGS. 12 through 15. The iterative section common to both optimization functions will now be described."

Even if the cited portion of Hammann is equivalent to providing an optimal price and quantity, Hammann still fails to teach or suggest deriving "one or more locally optimal solutions," as recited in Claim 34. Moreover, Examiner Krisciunas has not provided any reason why one of ordinary skill in the art at the time of the invention would have been motivated to combine Hammann, Talluri, and Baiada so as to arrive at "applying at least one revenue management program to the revenue management problem data stored in the generic revenue management data model to derive one or more locally optimal solutions." Hence, the combination of Hammann, Talluri, and Baiada fails to teach or suggest Claim 34.

### **Examiner Cannot Rely on Applicant's Own Disclosure**

Applicant respectfully submits that Examiner Krisciunas improperly relied on Applicant's own disclosure, under "DETAILED DESCRIPTION OF THE INVENTION," on page 5, paragraph 20, of the Specification. The initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done without the benefits of Applicant's disclosure. "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985). See also, MPEP 2144.09. Applicant respectfully submits that Examiner Krisciunas has not met this initial burden.

Applicant further respectfully submits that Examiner Krisciunas's statement "revenue manage software packages that are currently on the market are considered generic as well since they are purchased and used by many different people and companies for many different problems with different data sets" is flawed for at least the following reasons. First, even assuming there were a generic RM data model *currently* on the market, it was not on the market *at the time the invention was made* and thus would not qualify as prior art under 35 U.S.C. §§ 102/103. Second, as respectfully submitted above, the term "generic" functionally describes the RM data model as claimed in Claims 1-12 and 22-34. The fact that a product can be "purchased and used by many different people and companies for many different problems with different data sets" is not at all relevant.

In view of the foregoing, Applicant respectfully submits that Claims 1-12 and 22-34 recite patentable subject matter not reached by Hammann, Hammann and Talluri, and Hammann, Talluri, and Baiada under 35 U.S.C. §103(a). Accordingly, withdrawal of this rejection is respectfully requested.



Conclusion

Applicant has now made a bona fide attempt to place the present application in condition for allowance. Favorable consideration and a Notice of Allowance of all pending claims is therefore respectfully solicited. Other than as explicitly set forth above, this reply does not include any acquiescence to statements, assertions, assumptions, conclusions, or any combination thereof in the Office Action. The Examiner is invited to telephone the undersigned at the number listed below for discussing an Examiner's Amendment or any suggested actions for accelerating prosecution and moving the present application to allowance.

The Director of the U.S. Patent and Trademark Office is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 50-3183 of Sprinkle IP Law Group.

Respectfully submitted,

**Sprinkle IP Law Group**  
Attorneys for Applicant

A handwritten signature in cursive script, reading "Katharina W. Schuster".

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